

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of

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Appeal No. 20-0002

DECISION

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS) Office of Management and Budget, and is located in NOAA’s headquarters in Silver Spring, Maryland. The Regional Administrator of NMFS’ West Coast Regional Fisheries Office (WCRO) may affirm, reverse, modify, or remand this decision.¹

██████████ (Appellant) filed the appeal under review. Appellant requests review of WCRO’s 2019 vessel account non-renewal and 2020 Quota Pounds (QP) carryover non-eligibility determination for F/V ██████████, vessel account number ██████████. (Vessel).

On September 9, 2019, WCRO sent to Appellant a letter titled “Renewal Reminder - Vessel Account: ██████████ Pacific Coast Groundfish Catch Share Program Individual Fishing Quota (IFQ) Program” (Letter).² The Letter indicated that it was a reminder to Appellant that he needed to renew his vessel account for 2020 through his online account between October 1, 2019 and November 30, 2019, and provided detailed instructions to him on the steps he must take to renew his account. The Letter also indicated that the applicable regulations for Shorebased IFQ Program vessel account renewals can be found at §660.140(e)(3).

On February 20, 2020, WCRO sent an Initial Administrative Determination Notice of Right to Appeal Letter (IAD) to ██████████. (Appellant).³ The IAD indicated that NMFS determined that Appellant’s vessel account was not renewed between October 1 and November 30, 2019, and that Appellant’s vessel account would not receive carryover in 2020. On February 24, 2020, Appellant received the IAD.⁴

¹ 15 C.F.R. § 906.17(c)(1) (2014).

² Appeal Communication Tab, letter from WCRO to Appellant titled “Renewal Reminder - Vessel Account: ██████████ Pacific Coast Groundfish Catch Share Program Individual Fishing Quota (IFQ) Program,” dated September 9, 2019.

³ IAD Tab, Initial Administrative Determination Notice of Right to Appeal, dated February 20, 2020.

⁴ Appeal Tab, Appellant’s appeal letter stating that on February 24, 2020 he received a certified letter dated February 20, 2020, indicating that he would not receive carryover because his vessel account was not renewed in 2019, dated and received March 25, 2020.

On March 25, 2020, Appellant appealed the IAD.⁵ On April 7, 2020, NAO sent to Appellant a letter acknowledging receipt of his appeal, and requesting Appellant submit any additional material concerning the appeal to NAO by April 14, 2020.⁶ On April 7, 2020, Appellant sent to NAO a written request for an extension of time to submit additional material for his appeal.⁷ Specifically, Appellant stated in his request that he would like to review agency records that WCRO provided to NAO relevant to his appeal, and that he would requests a 10-day extension of time from the date those records are sent to him. On April 8, 2020, WCRO provided the agency records that Appellant requested to NAO and to Appellant.⁸ On April 9, 2020, NAO sent to Appellant an Order Granting Extension for Time to Submit Additional Material, indicating that Appellant had until April 20, 2020, to submit additional material to NAO for his appeal.⁹ On April 10, 2020, in response to a request from Appellant, WCRO provided additional agency records to NAO and to Appellant.¹⁰ On April 15, 2020, in response to a subsequent request from Appellant, WCRO provided additional agency records to NAO and to Appellant.¹¹ Appellant provided no additional supporting documentation.

After carefully reviewing the information contained in the record, I have determined it is sufficient to adjudicate this appeal. I therefore close the record and render this decision.¹²

ISSUES

The legal issue in this case is whether Vessel qualifies for 2020 carryover QP. However before I may consider the merits of Vessel's eligibility for 2020 QP, I must first determine whether Appellant timely appealed the IAD.

If Appellant did not timely file his appeal, I am barred from determining Vessel's eligibility for 2020 carryover QP.

⁵ Appeal Tab, Appellant's appeal letter sent by fax, dated and received March 25, 2020.

⁶ Appeal Correspondence Tab, Acknowledgment Letter, dated April 7, 2020.

⁷ Appeal Communication Tab, email from Appellant requesting extension to submit additional material, received April 7, 2020.

⁸ Appeal Communication Tab, email from Matthew Dunlap to Appellant and NAO with requested records attached, sent April 8, 2020.

⁹ Decisions Orders Notices Tab, Order Granting Extension for Time to Submit Additional Material, dated April 9, 2020.

¹⁰ Appeal Communication Tab, email from Matthew Dunlap to Appellant and NAO with requested records attached, sent April 10, 2020.

¹¹ Appeal Communication Tab, email from Matthew Dunlap to Appellant and NAO with requested records attached, sent April 15, 2020.

¹² 15 C.F.R. § 906.11(a)(1) (2014); 15 C.F.R. § 906.12(a) (2014).

FINDINGS OF FACT

1. WCRO issued to Appellant an IAD on February 20, 2020.¹³
2. Appellant received WCRO's IAD on February 24, 2020.¹⁴
3. NAO received Appellant's appeal on March 25, 2020.¹⁵
4. Appellant stated in his appeal letter that his appeal was filed late.¹⁶

PRINCIPLES OF LAW

“Vessel accounts expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to ensure the vessel account is active on January 1 of the following year.”¹⁷

“A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.”¹⁸

NMFS will inactivate at the end of the calendar year any vessel account for which SFD does not receive a vessel account renewal request by November 30. “NMFS will not issue QP or IBQ pounds to the inactivated vessel account. Any QP or IBQ pounds in the vessel account will expire and surplus QP or IBQ pounds will not be available for carryover.”¹⁹

Vessel account renewals are subject to the appeals process: An IAD appeal “must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD.” If an IAD is not appealed within 30 calendar days, it becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.²⁰

“If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.”²¹

“A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.”²²

¹³ IAD Tab, Initial Administrative Determination Notice of Right to Appeal, dated February 20, 2020.

¹⁴ Appeal Tab, Appellant's appeal letter stating that on February 24, 2020 he received a certified letter dated February 20, 2020, indicating that he would not receive carryover because his vessel account was not renewed in 2019, dated and received March 25, 2020.

¹⁵ Appeal Tab, Appellant's appeal letter sent by fax, dated and received March 25, 2020.

¹⁶ Appeal Tab, Appellant's appeal letter sent by fax, dated and received March 25, 2020.

¹⁷ 50 C.F.R. § 660.140(e)(3)(i)(A) (2020).

¹⁸ 50 C.F.R. § 660.140(e)(3)(i)(A) (2020).

¹⁹ 50 C.F.R. § 660.140(e)(3)(i)(C) (2020).

²⁰ 50 C.F.R. § 660.140(e)(6) (2020), 50 C.F.R. § 660.25(g)(4)(ii) (2019).

²¹ 50 C.F.R. § 660.25(g)(4)(iii) (2019).

²² 15 C.F.R. § 906.4(a)(2) (2014).

A person may not request an extension of time to file a petition to appeal.²³

ANALYSIS

Did Appellant timely appeal the IAD issued to him?

On February 20, 2020, WCRO issued its IAD to Appellant. Pursuant to 50 C.F.R. § 660.25(g)(4)(ii), Appellant had 30 days after February 20, 2020, to timely file his appeal, which was March, 21, 2020. Because March 21, 2020, was a Saturday, 50 C.F.R § 660.25(g)(4)(iii) instructs that the appeal filing deadline was extended to Monday March 23, 2020. The record, however, establishes that Appellant sent, and NAO received, Appellant's appeal letter on March 25, 2020.

Appellant stated in his appeal letter that ██████████, who works with him and handles their office management business functions, became seriously ill in 2019. Appellant also indicated in his appeal letter that ██████████ medical issues impaired ██████ ability to participate in their business. Appellant acknowledged in his appeal letter that his appeal was filed late, and indicated that ██████ health issues caused the delay in filing his appeal.

Additionally, Appellant stated in his appeal letter that 2020 carryover QP, if granted, would include 7,000 to 8,000 pounds of sablefish, which would be of significant financial value to him. Appellant indicated in his appeal letter that the sable fishery has been one of his two primary fisheries for over 40 years.

The record establishes that Appellant did not appeal the IAD issued to him within the 30-day time limit specified in 50 C.F.R. § 660.25(g)(4)(ii). Furthermore, 15 C.F.R. § 906.3(e)(2) explicitly states that a person may not request an extension of time to file an appeal. Additionally, neither 50 C.F.R. § 660.25 nor 15 C.F.R. § 906 contain any provisions allowing medical, financial, or other hardship to be considered when determining the timeliness of an appeal. I empathize with Appellant over both ██████████ medical issues and his financial loss as a result of him not receiving 2020 carryover QP, however the applicable regulations preclude an appellate review on the merits of his case. As 50 C.F.R. § 660.25(g)(4)(ii) unequivocally states, if an IAD is not appealed within 30 days, it becomes the final decision of the Department of Commerce

CONCLUSIONS OF LAW

Appellant has not shown by a preponderance of the evidence that he timely filed his appeal, and, therefore, is not entitled to a review on the merits of WCRO's determination that Vessel did not qualify for 2020 carryover QP. Accordingly, I must uphold the IAD.

²³ 15 C.F.R. § 906.3(e)(2) (2014).

ORDER

The IAD dated February 20, 2020, is upheld. Appellant may submit a Motion for Reconsideration.²⁴ Any Motion for Reconsideration must be transmitted by fax to NAO no later than May 4, 2020. A Motion for Reconsideration must be in writing and contain a detailed statement of one or more specific material matters of fact or law that the administrative judge overlooked or misunderstood.

A redacted signature of Steven Goodman, consisting of a large black rectangular block with a small white rectangular area in the lower-left corner where the signature is written in red ink.

Steven Goodman
Chief Administrative Judge

Date Issued: April 24, 2020

²⁴ 15 C.F.R. § 906.16 (2014).